

ENVIRONMENTAL QUALITY

CHAPTER 38

PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS

Sub-Chapter 6

Administrative Enforcement Procedures

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Sub-Chapter 6

Administrative Enforcement Procedures

17.38.601 PURPOSE (1) This subchapter implements 75-6-103, MCA, which requires rules establishing administrative enforcement procedures and administrative penalties authorized under the Public Water Supply Act, Title 75, chapter 6, part 1, MCA. These rules are to be applied in accordance with the enforcement policies and procedures adopted by the department for water quality related laws and programs administered by the department. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1101, 1998 MAR p. 2754, Eff. 10/9/98.)

17.38.602 DEFINITIONS Unless the context clearly states otherwise, the following definitions, in addition to those in 75-6-102, MCA, and ARM 17.38.202 apply throughout this subchapter.

(1) "Act" means Title 75, chapter 6, part 1, MCA.

(2) "Class I violation" means a violation of the act or regulations requiring an immediate action or response by a person because of the health risk involved. These violations include, but are not limited to, the following:

(a) failure to act in the best interest of public health in an emergency situation, including, but not limited to, disease outbreaks, spills, tampering and treatment facility failures;

(b) failure to provide continuous disinfection when continuous disinfection has been required by the department; and

(c) failure to respond to nitrate, total coliform, turbidity, or other MCL violations that pose an acute risk to public health, including check sampling, and public notification.

(3) "Class II violation" means any violation determined by the department not to be a Class I violation.

(4) "Consent order" means a legally binding agreement signed by a person and the director or designee, whereby correction of recorded violations may be scheduled and penalties may be established for failure to comply within the time scheduled for compliance. Penalties for recorded past violations may also be included in the agreement.

(5) "Designee" means an employee of the department who has been authorized by the director to issue orders under this subchapter.

(6) "Director" means the director of the department.

(7) "Fees" means the annual assessment of fees for public water supply systems and fees assessed for the review of plans and specifications submitted to the department, as provided by 75-6-108, MCA.

(8) "Final order" means an order of the department issued or in force pursuant to 75-6-109, MCA, the recipient of which has failed to exercise within 30 days its right to a hearing before the board or has waived such right, or has exercised such right to a hearing, following which the board has issued a final order either affirming or modifying the department's order.

(9) "Order" means a written direction issued by the department to a person to take an action or series of actions to comply with a provision of the act or rules implementing the act, within a time established under the order and which may include a penalty assessment.

(10) "Person" is defined in 75-6-102, MCA, and includes a certified operator or any authorized agents of or contractors to any entity defined as a person.

(11) "Violation letter" means a letter sent by the department pursuant to 75-6-110(2), MCA, to notify persons that they are in violation of the act, rules implementing the act, a condition of approval, or an order of the department, and to describe the actions and a timetable necessary to return to compliance. A violation letter does not constitute a final action by the department and does not create a right to a contested case appeal. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1102, 1998 MAR p. 2754, Eff. 10/9/98; AMD, 2003 MAR p. 2291, Eff. 10/17/03.)

17.38.603 ENFORCEMENT PROCEDURES (1) Administrative enforcement under this subchapter encourages progressive enforcement from an initial enforcement response, such as a written or oral communication, through optional follow-up or additional enforcement actions. The initial administrative enforcement action taken will be determined according to the following criteria:

(a) unless the violation represents an imminent threat to human health, safety, or welfare or to the environment, or is a Class I violation, the department shall first send a violation letter, pursuant to 75-6-110(2), MCA, prior to initiating an administrative enforcement action under this rule;

(b) the department may respond to a Class I violation or a violation that represents an imminent threat to human health, safety, or welfare or to the environment, by issuing an order in lieu of a violation letter;

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(c) if a person fails to comply with the compliance requirements or schedule specified in a violation letter, the department may respond by issuing an order.

(2) Orders under this subchapter may include, but are not limited to, the following requirements or conditions:

(a) that the existing public water supply or sewage system be repaired or modified;

(b) that treatment be installed or improved;

(c) that the source of water supply be changed;

(d) that no additional service connections be made to the public water supply or sewage system;

(e) that the public water supply or sewage system conduct monitoring and reporting;

(f) that a report concerning the condition and operation of the public water supply or sewage system be submitted to the department;

(g) that maps, design reports, plans and specifications required by ARM 17.38.101 be submitted to the department;

(h) that corrective measures be implemented to eliminate a violation or exceedence of an MCL;

(i) that any commencement or continued construction, alteration, extension or operation of the public water supply or sewage system be halted until all written approvals or fees required by statute or rule are obtained;

(j) that activities be conducted to prevent or remove a source of pollution from a place that will cause pollution of a public water supply system or of state water used for domestic purposes;

(k) that public notification be given as specified by rule or order; and

(l) that the public water supply or sewage system retain a certified operator in accordance with Title 37, chapter 42, MCA.

(3) The provisions of this subchapter do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties and injunctive relief, prior to initiating an administrative action under this subchapter. The judicial action may be criminal or civil. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1103, 1998 MAR p. 2754, Eff. 10/9/98; AMD, 2003 MAR p. 2291, Eff. 10/17/03.)

Rules 17.38.604 and 17.38.605 reserved

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17.38.606 ADMINISTRATIVE PENALTIES (1) The minimum daily administrative penalties for listed violations are set forth in Table I. To determine the total amount of the penalty to be assessed for a violation, the department shall adjust the minimum daily administrative penalty for the violation from Table I by the amounts calculated in (2). That amount must then be multiplied by the number of days of violation that has been charged by the department. To that amount the department shall add the amount of economic benefit calculated in (3). The amount that results is the total penalty amount. The total penalty amount, when divided by the number of days of violation charged, may not exceed \$1,000 for a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000, and \$500 for other violations.

See next page for Table I

Table I  
Schedule of Minimum Daily Administrative Penalties  
for Violations of the Public Water Supply Laws & Rules

Type of Violation	Penalty per day (\$)			
	S1	S2	S3	S4
Violations That Affect Human Health				
Acute MCL violation	\$85	\$170	\$340	\$680
Failure to monitor or report samples for acute contaminants (includes bacteria, turbidity and/or nitrate)	\$75	\$150	\$300	\$600
Failure to provide public notification of boil order or health advisory	\$65	\$130	\$260	\$520
Failure to provide treatment	\$50	\$100	\$200	\$400
Non-acute MCL violation	\$45	\$90	\$180	\$360
Failure to provide public education or notification (except for notification of boil order or health advisory)	\$40	\$80	\$160	\$320
Failure to monitor or report samples for water quality parameters or non-acute contaminants (other than bacteria, turbidity and nitrate)	\$35	\$70	\$140	\$280
Failure to self-monitor for chlorine, turbidity, or fluoride	\$10	\$20	\$40	\$80
Violations That Affect Program Administration and Integrity				
Failure to pay annual service connection fee	\$2	\$4	\$8	\$25
Failure to comply with an administrative order				
-water supply system	\$100	\$200	\$400	\$800
-sewage system	\$100	\$200	\$400	\$400
Failure to use certified operator	\$5	\$10	\$15	\$30
Construction, modification, or operation of a system without plan approval				
-water supply system	\$100	\$200	\$400	\$800
-sewage system	\$50	\$100	\$200	\$400

S1: Public system serving &lt; 250 persons

S2: Public system serving 251 - 2,500 persons

S3: Public system serving 2,501 - 10,000 persons

S4: Public system serving &gt; 10,000 persons

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(2) The department shall adjust the minimum daily administrative penalty from Table I by the following factors:

(a) The department shall consider the circumstances of the violation. If a violation has occurred through no negligence on the part of the violator, the minimum daily administrative penalty may not be increased for this penalty component. If a violation involves ordinary negligence, which is the failure to exercise the reasonable care of a person of common prudence, the minimum daily administrative penalty must be increased by up to 10%. If a violation involves gross negligence, which is the gross or reckless disregard for the violated legal requirement, the minimum daily administrative penalty must be increased by up to 15%. If the violation occurred due to intentional conduct, the minimum daily administrative penalty must be increased by up to 25%.

(b) The department shall consider the violator's history of violations. The minimum daily administrative penalty must be increased by 5% for each Class II violation, and 10% for each Class I violation, for which the department issued a warning letter, letter notifying the person of the violation under 75-6-110, MCA, or notice of violation, or successfully prosecuted a judicial action, within the two years prior to the date of the violation for which the penalty is being assessed. The maximum amount by which a minimum daily administrative penalty may be increased for history of violations is 20% of the penalty for the violation from Table I. A violation may not be counted if:

- (i) the notice of violation was vacated; or
- (ii) the notice of violation is subject to a pending administrative action; or
- (iii) the time to request review or appeal of an administrative or judicial decision has not expired.

(c) The department shall consider voluntary mitigation. If the violator takes measures beyond those required by the law to mitigate the violation or the impacts of the violation on human health or the environment, up to 20% of the minimum daily administrative penalty may be deducted.

(3) The department shall determine any economic benefit or savings that the violator gained as a result of the violation. The department shall use the best information reasonably available at the time of calculating the penalty to determine the economic benefit or savings. The dollar value of the economic benefit or savings, if any, must be added to the penalty amount calculated in (1) of this rule to determine the total penalty amount.

(4) If, after the notice of violation and administrative penalty order have been served, the violator wishes to have

the department consider its ability to pay, the violator shall provide information concerning its financial situation to the department. The department shall review the information provided and proceed as follows:

(a) If the department determines that the violator is unable to immediately pay the total penalty amount, but that the violator is able to pay on a schedule, the department may place the violator on a payment schedule. The department may charge interest on the unpaid balance at the rate assessed by the Montana department of revenue on income tax due.

(b) If the department determines that the assessed penalty is unfair in light of the violator's ability to pay, it may reduce the penalty. However, the total penalty amount may not be reduced to a value less than the violator's economic benefit resulting from the violation. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1106, 1998 MAR p. 2754, Eff. 10/9/98; AMD, 2000 MAR p. 2698, Eff. 10/6/00.)

17.38.607 SUSPENDED PENALTIES (1) Prior to issuing an NOV and order that is to include administrative penalties, the department director or designee may consider suspending a portion of the administrative penalties when deemed appropriate. In evaluating the appropriateness of suspended penalties, the department director or designee shall consider the following criteria:

- (a) timeliness in response to violation;
- (b) history of past violations;
- (c) cooperative efforts toward compliance;
- (d) severity of violation and relative risk to human health; and
- (e) other extenuating circumstances.

(2) Whenever the director or designee determines that suspended penalties are appropriate, then written documentation will be provided stating the basis for the determination using the criteria listed in (1)(a) through (e) of this rule.

(3) Penalties suspended under this provision will be deemed waived if the violator complies with all provisions of the administrative order and remains in compliance for a period of one year from the date of compliance with the administrative order. (History: 75-6-103, MCA; IMP, 75-6-109, MCA; NEW, 1995 MAR p. 282, Eff. 2/10/95; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.1107, 1998 MAR p. 2754, Eff. 10/9/98.)



